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EPA Region 10

Office of the Regional Administrator

June 13, 2019

Via Certified Mail, Return Receipt Requested

Benjamin Simons
PO Box 471
Yoncalla, OR 97499

**Re: Sixty-Day Notice of Intent to Sue For Violations of Clean Water Act
for Suction Dredge Mining In Idaho Without an NPDES Permit**

Dear Mr. Simons:

I write on behalf of my client, the Idaho Conservation League (ICL), to provide you with notice of ICL's intent to initiate a federal court lawsuit against you to enforce provisions of the federal Clean Water Act (CWA), 33 U.S.C. §§ 1311(a) & 1342, if you discharge any pollutant(s) from a suction dredge(s) to the South Fork Clearwater River, or any other water body in Idaho, without a National Pollutant Discharge Elimination System ("NPDES") permit.

If you engage in any suction dredge mining in Idaho without obtaining and complying with the terms of any required NPDES permit(s), ICL intends to file suit under the CWA citizen suit provision, in U.S. District Court following the expiration of the 60-day statutory notice period, seeking injunctive relief, civil penalties, and other relief for your CWA violations, and for any additional similar violations identified subsequently. *See* 33 U.S.C. § 1365.

ICL's Commitment to Improving Water Quality

Since 1973, the Idaho Conservation League has been Idaho's voice for clean water, clean air, and wilderness—values that are the foundation of Idaho's extraordinary quality of life. ICL works to protect these values through public education, outreach, advocacy, and policy development. As Idaho's largest state-based conservation organization, ICL represents over 30,000 supporters, many of whom have a deep personal interest in protecting and restoring water quality throughout the rivers and streams of Idaho, including the Clearwater River watershed.

ICL has staff, members and supporters who live, recreate, and/or work in and around the Clearwater and other Idaho watersheds, including near and downstream of your potential suction dredge mining operations and pollutant discharges in Idaho addressed below. ICL staff, members, and supporters frequently visit, recreate, and engage in activities in this area and in areas downstream which are impacted by where your suction dredge mining and discharges would be.

Clean Water Act Permitting for Suction Dredges in Idaho

The CWA prohibits the discharge of any pollutant by any person from a point source to a water of the United States unless authorized by a NPDES permit. 33 U.S.C. § 1311(a). *See also* 33 U.S.C. § 1342. A suction dredge is a CWA point source. Operating a suction dredge discharges sediment and other CWA-regulated pollutants to waters of the United States and, thus, requires obtaining and complying with the terms of a valid NPDES permit.

To facilitate NPDES permitting for suction dredge mining in Idaho, the U.S. Environmental Protection Agency (EPA) adopted a “general” NPDES permit in 2013 and reissued the general permit in 2018. The general permit is available to dredge miners if they meet specified conditions, including using an intake nozzles of five inches in diameter or less, using an engine rated at 15 horsepower or less, and operating only in Idaho’s “open or allowed” streams. The general NPDES permit places conditions on the discharge of rock and sand from each mining operation to protect water quality and aquatic resources, including best management practices and prohibited areas. To obtain coverage under the general NPDES permit, a person must submit a Notice of Intent to EPA seeking coverage for eligible mining operations.¹

For suction dredge mining not eligible for coverage under the general permit, a person must submit an application for, and obtain from EPA, an “individual” NPDES permit.^{2,3}

Clean Water Act Violations

Based on reasonable investigation to date and publicly available information, ICL is informed and believes that you are likely to violate the CWA, 33 U.S.C. §§ 1311(a) & 1342, by conducting suction dredge mining and discharging sediment and other pollutants to rivers and streams in Idaho without a valid NPDES permit. You applied for an IDWR Recreational Mining Permit for the 2019 dredge season, stating you intend to dredge on the South Fork Clearwater

¹ EPA provides information about the general NPDES permit, including how to apply at: <https://www.epa.gov/npdes-permits/npdes-general-permit-small-suction-dredge-placer-miners-idaho> (visited April 18, 2019).

² Information about individual NPDES permits and how to apply is available from EPA at: <https://www.epa.gov/npdes/npdes-permit-basics> (visited April 18, 2020). You can contact Mike Lidgard at the EPA Region 10 office by phone at (206) 553-1755 or by email at lidgard.michael@epa.gov with questions about NPDES permitting or to apply.

³ Currently, the CWA permit program for discharges from suction dredge mining in Idaho is administered by EPA. The permitting program is, however, in the process of being transferred to the State of Idaho’s Department of Environmental Quality (DEQ) in phases. EPA will continue administering the general NPDES permit program for suction dredge discharges until July 1, 2020, when general permitting authority will be transferred to Idaho.³ EPA will continue administering the individual NPDES permit program for suction dredge discharges until July 1, 2019. Information about Idaho’s permitting program (“IPDES”) is available at: <http://www.deq.idaho.gov/water-quality/ipdes/> (visited April 18, 2019). You can contact Mary Anne Nelson (IPDES Program Manager at DEQ) by phone at (208) 373-0291 or by email at mary.anne.nelson@deq.idaho.gov.

River; however, you have not applied for or received an NPDES permit authorizing you to discharge pollutants from a dredge to the South Fork or any other waterbody in Idaho.

Penalties and Injunctive Relief

If you discharge pollutant(s) from a suction dredge without an NPDES permit, your actions will violate the Clean Water Act, 33 U.S.C. § 1311(a), and subject you to imposition of statutory penalties as well as other liability. The CWA, 33 U.S.C. § 1319(d), adjusted by 40 C.F.R. § 19.4 and 84 Fed. Reg. 2056 (Feb. 6, 2019), provides for imposition of civil penalties of up to \$54,833 per violation per day. For each day you discharge pollutants from a suction dredge to the South Fork Clearwater River and/or other Idaho rivers and streams without a valid NPDES permit, you are liable for penalties under 33 U.S.C. § 1319(d).

As provided under the CWA's citizen suit enforcement provision, 33 U.S.C. § 1365, ICL is authorized to file federal court litigation against you for these violations of the CWA, and any similar violations ICL later discovers, following expiration of the 60 day notice period. 33 U.S.C. § 1365(b). The court may award injunctive relief as well as the statutory penalties noted above. In addition, ICL may recover its reasonable attorney fees and litigation costs incurred in prosecuting the action against you. *See* 33 U.S.C. §§ 1319(d) & 1365(a), (b) & (d).

We are providing this letter not only to comply with the CWA statutory notice requirement, 33 U.S.C. § 1365(b), but also in the hope of preventing your future violations of the CWA. In addition, one of the principal purposes of the CWA notice requirement is to allow the parties to discuss resolution of claims short of litigation. ICL sends this notice letter, in part, to encourage settlement negotiations, which could avoid the need for litigation. During the 60-day notice period, ICL and I (contact information below) will be available to discuss alternative remedies and actions that might be taken to assure compliance in the future with the CWA. If any information in this letter is inaccurate, you should inform us immediately.

Party & Attorney Giving Notice

The full name, address, and telephone numbers of the party giving notice is:

Idaho Conservation League
Att'n: Jonathan Oppenheimer
P.O. Box 844
Boise, ID 83701
208.345.6933

The full name, address, and telephone number of the attorney representing ICL is:

Bryan Hurlbutt, Staff Attorney
Advocates for the West
P.O. Box 1612
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208.342.7024 x206

Respectfully,



Bryan Hurlbutt

Cc Via Certified Mail, Return Receipt Requested:

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